

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 FABIAN MENDEZ,

6 Petitioner,

7 CASE NO. C14-5228 BHS
8 CR10-5723BHS

v.

9 UNTIED STATES OF AMERICA,

10 Respondent.

11 ORDER DENYING PETITIONER'S
12 MOTION

13 This matter comes before the Court on Petitioner Fabian Mendez's ("Mendez") motion to
14 set aside, vacate, or correct sentence (Dkt. 1). The Court has considered the pleadings filed in
15 support of the motion and the remainder of the file and hereby denies the motion for the reasons
16 stated herein.

17 **I. PROCEDURAL HISTORY**

18 On September 30, 2011, Mendez was found guilty by a jury of conspiracy to distribute
19 methamphetamine and possession of methamphetamine with intent to distribute. Cause No. 10-
20 5723, Dkt. 149. The jury also found that each crime involved 500 grams or more of the drug.

21 *Id.*

22 On August 27, 2012, the Court sentenced Mendez to 120 months imprisonment, the
23 statutory mandatory minimum. *Id.*, Dkt. 196. On September 5, 2012, Mendez appealed. *Id.*,
24 Dkt. 207. On July 22, 2013, the Ninth Circuit Court of Appeals affirmed the conviction and
25 sentence. *Id.*, Dkt. 217.

26 On March 17, 2014, Mendez filed the instant motion to set aside vacate or correct his
27 sentence pursuant to 28 U.S.C. § 2255. Dkt. 1. He maintains that both his Sixth Amendment

1 right to trial by an impartial jury and his due process right to have the jury find, beyond a
2 reasonable doubt, all elements necessary to increase his sentence above mandatory minimum
3 were violated. *See id.*

4 II. DISCUSSION

5 Mendez bases his arguments largely on a recent Supreme Court decision, *Alleyne v.*
6 *United States*, 133 S.Ct. 2151 (2013). *See Dkt. 1.* He argues that because the Court increased his
7 sentence by “holding him accountable for 3-kilograms of methamphetamine,” although the jury
8 only found that each crime it convicted him of involved 500 grams or more of the drug, his rights
9 were violated. Dkt. 1 at 3-4. According to Mendez, this is contrary to the holding in *Alleyne*,
10 which requires any fact that increases the mandatory minimum to be found by the jury. *Id.* In
11 conjunction with this error, Mendez argues, the jury did not find beyond a reasonable doubt that
12 he was responsible for three kilograms, which is necessary for the implementation of his current
13 sentence, thus violating his right to due process. *See id.* at 4-6 (citing *United States v. Gaudin*,
14 515 U.S. 506, 510 (1995) (the “Due Process Clause requires that each element of a crime be
proved to the jury beyond a reasonable doubt”).

15 In *Alleyne*, the Supreme Court held that a fact that increases the mandatory minimum is
16 an element that must be submitted to the jury. *Alleyne*, 133 S.Ct. at 2163. The statutes under
17 which Mendez was convicted carry a mandatory minimum of one hundred and twenty (120)
18 months in custody and a term of supervised release of not less than five years. *See 21 U.S.C. §*
19 *841(b)(1)(A) and 21 U.S.C. § 841(b)(1)(A).* Contrary to Mendez’s understanding, the Court did
20 not base his sentence on its own finding that Mendez was in possession of three kilograms of
21 methamphetamine, nor did it use such a finding to increase his sentence beyond the mandatory
22 minimum. Mendez received the only the mandatory minimum sentence for the crimes of which

1 he was convicted. There was no extra element used to increase his sentence, so no additional
2 element needed to be found by the jury beyond a reasonable doubt. Thus, although no Ninth
3 Circuit case has determined if *Alleyne* is retroactively applicable, as Mendez argues (Dkt. 1 at 3),
4 even if it is, *Alleyne* has no application to the instant case.

5 If the Court is unable to grant him relief now, Mendez asks that the Court take judicial
6 notice that the “Smarter Sentencing Act” (“Act”) is now “pending in Congress.” Dkt. 1 at 6.
7 Mendez believes this Act will provide an avenue for seeking a sentence reduction, and he
8 requests the Court hold its decision in “abeyance” until Congress “rules” on the Act. *Id.* The
9 Court declines to do so. If the Act is passed and it provides him a legitimate avenue to challenge
10 his sentence, then Mendez may attempt to seek a sentence reduction pursuant to the pertinent
provisions of the Act and other relevant legal authority.

11 III. ORDER

12 Therefore, it is hereby **ORDERED** that Mendez’ s motion to set aside, vacate, or correct
13 sentence (Dkt. 1) is **DENIED**. A certificate of appealability is also **DENIED**.

14 Dated this 21st day of March, 2014.

15
16 
17

BENJAMIN H. SETTLE
18 United States District Judge
19
20
21
22